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January 30, 2004

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

EDWARD S. FELDNER, M.D.

ORDER ENTERING SUMMARY
DECISION AND REVOKING
LICENSURE

This matter was initially opened before the New Jersey State Board of Medical Examiners (the "Board") on April 17, 2001, upon the filing of an Administrative Complaint against respondent Edward S. Feldner, M.D., by the Attorney General of New Jersey. The Attorney General alleged therein that respondent had continued to practice medicine, after he voluntarily surrendered his medical license in August 1999, by signing a contract with the Passaic Board of Education to be employed as their school doctor and then conducting medical examinations on approximately sixty-three schoolchildren (Count I), and by issuing sixty-four prescriptions for both controlled dangerous substances and prescription legend drugs during the period of license suspension (Count II). The Attorney General additionally alleged that respondent violated the "duty to cooperate" regulation, N.J.A.C. 13:45C-1.3(a)(6) by failing to respond to an investigative subpoena which had demanded that he produce the records of the sixty-four patients to whom he had issued prescriptions (Count III).

CERTIFIED TRUE COPY

Although respondent did not file an answer to the Initial Complaint, no further action was taken in this matter until August 18, 2003. On that date, the Attorney General filed a notice of motion for leave to amend the Administrative Complaint against Dr. Feldner and a motion seeking summary decision upon the Amended Complaint. The Attorney General then sought to amend the complaint to add claims based upon respondent's criminal conviction and sentencing for the crimes of engaging in the Unauthorized Practice of Medicine, in violation of N.J.S.A. 2C:21-20 (a) or (c) (a third degree crime), and to add charges that respondent had written prescriptions in the name of his wife, mother and a fictitious patient in order to maintain a drug habit, which conduct ultimately formed the predicate for respondent's arrest and conviction for the crime of Obtaining Controlled Dangerous Substances by Fraud, in violation of N.J.S.A. 2C:35-13 (a third degree crime).

As had been the case in August 2001, respondent was again served with a copy of the complaint and notice of motion, and again failed to file any written response. This matter was then set down for a hearing before the Board. On October 8, 2003, Deputy Attorney General Swang OO appeared for complainant Attorney General. Although respondent did not communicate with the Board or otherwise advise that he would attend the hearing, Dr. Feldner did appear before the Board pro se. Respondent then acknowledged that he was aware that he could be represented by an attorney in these

proceedings. Respondent did not contest either the Attorney General's motion for leave to amend the complaint or any of the allegations and charges set forth in the Amended Complaint. Respondent instead testified on his own behalf during the mitigation phase of the hearing, and called David Canavan, M.D., Medical Director Emeritus of the Physicians' Health Program of the Medical Society of New Jersey (the "PHP"), to offer mitigation testimony on his behalf.

Entry of Summary Decision

As noted above, respondent does not contest any of the allegations set forth in the Amended Complaint. We thus grant the Attorney General's motion for summary decision, as there are clearly no genuine issues of material fact that would require resolution in a plenary hearing.

While it is arguably unnecessary for us to conduct fact finding, we make the following findings of fact, based on the convincing and conclusive evidence before us, both to appropriately memorialize this matter and so as to support the conclusion we have ultimately reached that respondent's license to practice medicine and surgery in New Jersey must presently be revoked.' We

¹ The following documents were moved into evidence by the Attorney General, without objection by respondent:

S-1 Certification of Sergeant Arthur E. Katz, of the Little Falls, New Jersey Police Department, to which were appended a field incident report dated August 12, 1999, a supplemental incident report dated August 12, 1999, a second supplemental incident report dated August 13, 1999 and the transcription of a

voluntary statement given by Edward J. Feldner to Detective Joseph Calafiore of the Little Falls Police Department on August 11, 1999.

- S-2 Evidence Voucher prepared by the Enforcement Bureau, Department of Law and Public Safety, listing by prescription number 134 prescriptions written and/or authorized by Dr. Feldner, for various patients on various dates (extending into June 2000) after Dr. Feldner surrendered his medical license, filled at Stanton's Drugs, Little Falls; Pathmark Pharmacy; West Paterson; Shop Rite Pharmacy, Little Falls; Family Meds Pharmacy, Clifton; and Colonial Pharmacy, Clifton, along with copies of said prescriptions.
- s-3 42 Original Prescriptions obtained from the Division of Criminal Justice, written by Dr. Feldner on various dates prior to the date on which he surrendered his license. The prescriptions, in the name of Dr. Feldner's wife, mother, or "patient" "Marlene Kovacs" {fictitious name}, were for substances including, but not limited to, Oxycontin (C-II), Tylox (C-11), Meperidine (C-II), Lortab (C-III), Lorcet (C-III) and Vicodin (C-III), and were for Dr. Feldner's own use.
- s-4 Certified True Copy of Judgment of Conviction dated January 14, 2002, in State v. Feldner, for the third degree crime of Obtaining CDS by Fraud, in violation of N.J.S.A. 2C:35-13.
- s-5 Certified True Copy of Judgment of Conviction dated January 14, 2002, in State v. Feldner, for the third degree crime of the Unauthorized Practice of Medicine, in violation of N.J.S.A. 2C:21-20 (a) or (c) (note: the statute is mistakenly cited in the Judgment of Conviction as 2C:21-2).
- S-6 Certification of William V. Roeder dated September 25, 2003 (re: service of Notice of Hearing and of Complaint upon Dr. Feldner and lack of response thereto).
- S-7 Certified True Copy of Consent Order of Voluntary Surrender entered into and agreed to by Edward S. Feldner, dated August 24, 1999 (filed by the Board on August 31, 1999).

We note that, in addition to the above documents, the Attorney General filed, as Exhibits to the Amended Complaint, the brief filed in support of the motion for summary decision and/or to the Certification of Deputy Attorney General Swang 00, certain documents that were not formally introduced into the record at the hearing before the Board. Given that the documents support the findings of fact made above, that they were filed as part of a motion for summary decision, and that respondent has not contested the allegations within the Amended Complaint, we consider said documents, listed below, to be part of the

break down our findings analytically into two distinct categories of misconduct - namely, that misconduct which occurred prior to the time Dr. Feldner voluntarily surrendered his medical license, and that misconduct which occurred thereafter.

record in this matter:

- Certification of George H. Pitchford, dated April 24, 2001, detailing service of the Administrative Complaint on April 10, 2001 {Exhibit B to brief in support of motion for summary decision dated August 8, 2003}.
- "Offense Information" detailing "offense circumstances" related to Dr. Feldner's indictment on the charge of engaging in the unauthorized practice of medicine (Exhibit C to Amended Complaint and Certification of D.A.G. 00).
- Passaic Police Arrest Report detailing arrest of Edward Feldner on December 7, 2000 on charge of Unauthorized Practice of Medicine [N.J.S.A. 2C:21-20 (a)] (Exhibit D to Amended Complaint and Certification of D.A.G. 00)
- Indictment No. 01-04-03781, in State of New Jersey v. Feldner, Superior Court, Passaic County, charging Dr. Feldner with having engaged in the Unauthorized Practice of Medicine in violation of N.J.S.A. 2C:21-20a or c. (Exhibit D to Amended Complaint and Certification of D.A.G. 00).
- Written "Plea Form" dated January 14, 2002 completed by Dr. Feldner memorializing plea of guilty to one count of Obtaining CDS by Fraud and one count of the Unauthorized Practice of Medicine (Exhibit E to Amended Complaint and Certification of D.A.G. 00).
- Accusation No. 00-06-0529A, in State of New Jersey v. Feldner, Superior Court, Passaic County, (filed June 7, 2000), charging Dr. Feldner with one count of violating N.J.S.A. 2C:35-13 (obtaining CDS by fraud) and one count of violating N.J.S.A. 2C:35-10a (illegal possession of CDS). (Exhibit I to Amended Complaint and Certification of D.A.G. 00)
- Subpoena Duces Tecum dated November 17, 2000, issued by Deputy Attorney General Beatriz Valera-Schutz, demanding production of 64 original patient records (Exhibit K to Amended Complaint).

Misconduct Occurring Prior to Surrender of Licensure

Prior to surrendering his license, for a period that spanned more than five years, respondent wrote prescriptions in the names of his wife, mother and fictitious patient "Marlene Kovacs" for controlled dangerous substances including Oxycontin (C-11), Tylox (C-II), Vicodin (C-111), Lortab (C-III) and Lorcet (C-III) (see S-3 in evidence)² and diverted the drugs obtained on filling those prescriptions for his own use. Respondent was arrested in Little Falls, New Jersey on August 11, 1999, after he masqueraded at a pharmacy as "John Kovacs" and attempted to fill a prescription he had written in the name of "Marlene Kovacs", a fictitious patient whose name and address he had made up (see S-1 in evidence), Dr. Feldner then gave a voluntary statement to the Little Falls Police Department, and admitted that he had written the fictitious prescriptions and that he had diverted the CDS obtained on filling those prescriptions for his own use (S-1). Dr. Feldner also admitted that he was addicted to the pain killers he was prescribing (S-1).

Dr. Feldner's misconduct ultimately formed the predicate for the filing of a formal Accusation on June 7, 2000, wherein he was charged for the crime of Obtaining CDS by Fraud, in violation

² We note that the prescriptions introduced into evidence as S-3 date as far back as March 11, 1994 (prescription for C.F. for Tylox).

of N.J.S.A. 2C:35-13³, and with having knowingly possessed a controlled dangerous substance, in violation of N.J.S.A. 2C:35-10a (see Exhibit I). Dr. Feldner pled guilty to the charge of Obtaining CDS by Fraud {see Exhibit E} (the charge of illegal possession of CDS was dismissed, see S-4), and was sentenced on April 12, 2002 to five years probation.⁴

Misconduct Occurring After Surrender of Licensure

On or about August 24, 1999, respondent entered into a Consent Order of Voluntary Surrender with the Board, which Order required him to immediately cease and desist from engaging in any medical practice in New Jersey, and further provided that he could not practice medicine again in New Jersey until such time as he appeared before a Committee of the Board and then secured approval for a return to practice from the Board (see S-7). Respondent

³ M.J.S.A. 2C:35-13 provides:

Obtaining by Fraud

It shall be unlawful for any person to acquire or obtain possession of a controlled dangerous substance or controlled substance analog by misrepresentation, fraud, forgery, deception or subterfuge. ... A violation of this section shall be a crime of the third degree except that, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine of up to \$50,000.00 may be imposed. ...

⁴ The Judgment of Conviction states that Dr. Feldner was sentenced as follows:

Probation - 5 years. Alcohol and Drug dependency rules to apply; defendant to receive substance abuse treatment and counselling as an Out-Patient; defendant to maintain full-time employment; defendant's Medical License is suspended for 5 years by consent as a further condition of Probation.

nonetheless continued to practice medicine thereafter until September 2000.

The evidence reveals that, on August 26, 1999, respondent entered into a contract with the Passaic City School System to serve as the Passaic City School Doctor and to perform physicals on the city school students (see Exhibit C). The contract was to be effective as of July 1, 1999, and covered services provided between July 1, 1999 and June 30, 2000. Id. Dr. Feldner was paid an annual fee of \$50,000 per year. Id. Dr. Feldner then entered into a second contract with the Passaic, School System for the period July 1, 2000 through June 30, 2001, again for an annual fee of \$50,000. Id. Dr. Feldner ultimately received payments totaling \$58,833.34 for the services he provided under the two contracts. Id. At all times, Dr. Feldner held himself out to the Passaic Board of Education, school personnel and students as being eligible to practice medicine, notwithstanding his knowledge that he was not so authorized by operation of the Consent Order he entered with the Board (see Exhibit D). Dr. Feldner continued to engage in medical practice through September 18, 2000. Id. Respondent does not contest the charges set forth in the Amended Complaint that he conducted medical examinations of 63 school children (Count I, ¶ 5) and that he issued 134 prescriptions of which six were for CDS (Count II, ¶3), all after he had purportedly surrendered his license (see S-2 in evidence).

Respondent was indicted on April 7, 2001, on charges that he engaged in the Unauthorized Practice of Medicine in violation of N.J.S.A. 2C:21-20(a) or (c) (see Exhibit D)⁵. Respondent ultimately entered a guilty plea to those charges (see Exhibit E), and was then sentenced to five years probation with a suspended prison term of 364 days at Passaic County jail (S-5).⁶

Finally, we note that respondent does not contest the allegations within Count III of the Amended Complaint that he failed to comply with a lawfully issued subpoena duces tecum demanding the production of sixty-four patient records (Exhibit K).

⁵ N.J.S.A. 2c:21-20 provides as follows:

Unauthorized practice of medicine and surgery or podiatry

A person is guilty of a crime of the third degree if he knowingly does not possess a license or permit to practice medicine and surgery or podiatry, or knowingly has had the license or permit suspended, revoked or otherwise limited by an order entered by the State Board of Medical Examiners, and he:

- a. engages in that practice;
- ..
- c. holds himself out to the public or any person as being eligible to engage in that practice.

Respondent was then sentenced as follows:

Probation 5 years. Alcohol and Drug dependency rules to apply; defendant to receive substance abuse treatment and counselling as an Out-Patient; defendant to maintain full-time employment; defendant's Medical License is suspended for 5 years by consent, said sentence to run concurrent with Accusation #00-06-0529A imposed on 4/12/02 by the Hon. Ronald G. Marmo, J.S.C.

Conclusions of Law

Based on the above findings of fact, we conclude that cause exists to enter disciplinary action against the license of respondent pursuant to N.J.S.A. 45:1-21 (b) (engaging in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense), N.J.S.A. 45:1-21(h) (engaging in the unauthorized practice of medicine), N.J.S.A. 45:1-21(e) (engaging in professional misconduct), and N.J.S.A. 45:1-21(f) (conviction of a crime or offense involving moral turpitude and/or relating adversely to the practice of medicine). We further find that, by failing to have complied with the subpoena duces tecum for the production of sixty-four patient records, respondent violated a regulation administered by the Board, specifically N.J.A.C. 13:45C-1.3(a)(6), which violation provides additional bases for an action against his license pursuant to N.J.S.A. 45:1-21(h).

Penalty

Following entry of summary decision on the complaint, a hearing was conducted on the penalty phase of this matter, at which hearing respondent was afforded an opportunity to make any presentations in mitigation of penalty which he deemed appropriate. Dr. Feldner made a statement to the Board in which he admitted that all charges in the complaint were true, and wherein he stated that he now recognizes that there were other options which he should

have availed himself of in 1999. Dr. Feldner apologized for his actions and took full responsibility for those actions.

Dr. Feldner stated that he entered the Physicians' Health Program of the Medical Society of New Jersey (the "PHP") the day following his arrest, and then followed all recommendations of the PHP to include signing the Consent Order whereby he surrendered *his* license to practice in New Jersey. He states that he stopped abusing drugs that day and has not used drugs since. He conceded, however, that even after he stopped using drugs, he continued to knowingly violate the terms of the Consent Order he signed with the Board by practicing as a school physician in the City of Passaic for approximately a year. Respondent suggests that he did so because he was then "in a panic" because he was in debt and had no source of income.

Following his second arrest, Dr. Feldner followed the recommendation of the PHP and entered an in-patient treatment program at the Clearbrook Manor. He testified that, since being discharged from Clearbrook, he has fully complied with all recommendations made to him by the PHP, and suggested that he has become a "different person" who has now put his life "back in order."

David Canavan, Medical Director Emeritus of the PHP, testified on Dr. Feldner's behalf. Dr. Canavan testified concerning Dr. Feldner's, history of drug use prior to the time he

surrendered his license and began to participate with the PHP, and concerning Dr. Feldner's participation with the PAP. Dr. Canavan stated that Dr. Feldner was initially marginally compliant with the PHP's recommendations, however he stated that since the time that Dr. Feldner completed a one month treatment program at Clearbrook Lodge in Wilkes-Barre, Pennsylvania (the PHP referred Dr. Feldner to Clearbrook after learning, in September 2000, that he had continued to practice after surrendering his license), he has been totally compliant with the requirements of the PHP, and has maintained abstinence from drug use for four years. Dr. Canavan stated that the PHP supported Dr. Feldner's return to practice and assured the Board that the PHP would monitor Dr. Feldner in any way that the Board might deem appropriate.⁷

It thus appears that, since his September 2000 arrest for the unauthorized practice of medicine and his subsequent completion of in-patient treatment at Clearbrook, Dr. Feldner has not only maintained abstinence from mood altering chemicals but also has been a compliant participant in the PHP's monitoring program. Dr.

⁷ In addition to Dr. Canavan's testimony, the PHP presented a written position statement, wherein it was noted that Dr. Feldner came to the attention of the PHP following his arrest in August 1999 based on his presentation of fraudulent prescriptions, at which time he admitted to a problem with Vicodin and Oxycodone over a 4-5 year period. The PHP states that following his discharge from Clearbrook, Dr. Feldner had been "much more compliant" with the PHP's recommendations, and that he had been drug free since August 1999. The PHP stated that it was "ready to support any decision that the Board makes in [Dr. Feldner's] case." The Position Statement was admitted into evidence as Exhibit R-1.

Feldner also presently accepts responsibility for and is contrite about the misconduct in which he engaged. While we arguably might have given greater weight to the above mitigation evidence had Dr. Feldner's misconduct ended following his arrest in August 1999 and following the time he entered a Consent Order with this Board to cease medical practice, we find the mitigating factors to be clearly outweighed in this case by the gravity of respondent's misconduct, particularly his knowing continued practice of medicine for over one year after he purported to surrender his medical license.

Respondent clearly flaunted the authority of this Board, and exhibited manifestly flawed judgment, by continuing to engage in medical practice for over a year after surrendering his license to this Board. The evidence suggests that respondent continued to practice medicine, and presumably would have continued to do so, until the Passaic Board of Education fortuitously found out that he was not in fact licensed, and he was arrested and criminally charged for having continued to practice medicine without a license. We unanimously conclude that Dr. Feldner's flagrant and disturbing misconduct after he voluntarily surrendered his license, standing alone or coupled with his having written numerous fraudulent prescriptions at a time that he was licensed by this Board, is misconduct which can only be adequately redressed by the

entry of an order revoking his medical license.⁸ Additionally, we order that respondent be required to pay all costs and attorneys fees incurred in this matter.

WHEREFORE,

IT IS on this 30th day of January, 2004

ORDERED nunc pro tunc October 8, 2003,

1. The license of respondent Edward S. Feldner, M.D., to practice medicine and surgery in the State of New Jersey is hereby revoked.

2. Respondent Edward S. Feldner, M.D., is hereby ordered to pay all costs, to include attorneys' fees, incurred in the prosecution of this matter by the State of New Jersey. The precise amount of costs to be assessed shall be fixed within a supplemental Order of this Board. We direct the Attorney General to submit a certification setting forth the amount of costs that were incurred in the prosecution of this matter. Respondent may thereafter submit objections, in writing, to any item sought as costs or to the costs generally, in which case the Board shall consider the written submissions of the parties prior to entering any

⁸ The criminal sentences which were entered by the Superior Court included provisions stating that respondent's medical license was to be suspended for a period of five years by consent. We do not find that the Superior Court's sentence would in any way preclude this Board from independently revoking respondent's license, and indeed note that, but for respondent's consent, the Superior Court would seemingly lack authority to order the suspension of respondent's license based on his conviction of the offenses to which he pled guilty. For the reasons set forth *infra*, we have unanimously concluded that respondent's actions warrant redress by the more severe penalty of licensure revocation.

supplemental order fixing *the* amount of costs to be paid by respondent in this matter. In the event no objections to any costs sought by the Attorney General are received, the Attorney General's application for costs shall be considered to be unopposed, and an Order will enter assessing costs sought by the Attorney General.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: 

Glenn A. Farrell, Esq.
Board Vice-President